

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

VAN DOORN & ASSOCIATES, B.V.,)	
)	
Plaintiff,)	
)	
v.)	01 CV 2513 M1/P
)	
CHRISTINE GERKE, et al.,)	
)	
Defendants.)	
)	

ORDER GRANTING DEFENDANT BANK OF AMERICA'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS REQUESTED IN BANK OF
AMERICA'S FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Before the court is defendant Bank of America's ("BOA") June 27, 2003, motion to compel the plaintiff, Van Doorn & Associates, B.V., to produce documents in response to Request Numbers 3 through 8 of BOA's Fourth Set of Requests for the Production of Documents (D.E. #187). All six requests concern documents surrounding plaintiff's investment of \$500,000 with Geoffroy LeClerc and his company, BLF Conseille ("BLF"), in December 2001. In response to BOA's motion, the plaintiff argues that the requested documents are not relevant to any issues in this lawsuit. The motion was referred to the United States Magistrate Judge for determination pursuant to 28 U.S.C. § 636(b)(1)(A). For the reasons below, defendant BOA's motion to compel is GRANTED.

I. FACTUAL BACKGROUND

On June 29, 2001, plaintiff, a Dutch asset management company, filed a complaint against BOA and other defendants. In its complaint, the plaintiff alleges that BOA improperly set up a deposit account into which the plaintiff deposited \$10,000,000 by wire transfer on February 2, 2001. The funds were to be invested in a Bank Secured High Yield Private Placement Program which was to yield the plaintiff a substantial profit within fifteen days of the deposit date. This profit was never realized.

Subsequently, when various individuals sought return of the \$10,000,000, BOA placed a hold on the funds. The issue of the ownership of the funds was litigated before the district court. During this litigation, the funds were interpleaded while the court determined the true owner. The court later granted summary judgment in favor of the plaintiff. BOA paid the funds, including principal and interest, to the plaintiff in December 2001. The plaintiff claims that BOA failed to return the funds in a timely manner, resulting in lost investment opportunities between June and December 2001, the time during which the funds were frozen by BOA. The plaintiff claims \$50,000,000 in compensatory damages for its lost investment opportunities.

The plaintiff's prayer for damages includes lost investment profits from June through December 2001, the period when plaintiff could not access its \$10,000,000. During that time period, in

December 2001, plaintiff's principal Iric Van Doorn ("Van Doorn") invested \$500,000 in BLF pursuant to an agreement between Van Doorn's company, Delta Business International, B.V. ("Delta"), and BLF. According to the terms of Van Doorn's investment agreement with BLF, Delta would receive the return of its principal plus 10% profit within one month.

BOA contends that Van Doorn's \$500,000 investment with BLF is relevant to the issue of damages because the plaintiff claims lost profits from missed opportunities to invest in programs similar to the program involving the \$10,000,000. In addition, BOA asserts that both the \$10,000,000 and \$500,000 investment programs were fraudulent investment schemes.

In response, the plaintiff insists that the documents concerning Delta's \$500,000 investment with BLF are not relevant because the plaintiff is no longer claiming any lost profits based on that particular investment. The plaintiff also contends that the \$500,000 and \$10,000,000 investments involved two different types of investment programs. Furthermore, the plaintiff complains that BOA is asking for documents relating to Geoffroy LeClerc and his firm, which is improper because Mr. LeClerc has since been withdrawn as the plaintiff's expert.

II. ANALYSIS

Federal Rule of Civil Procedure 34(a) provides for the discovery of documents and other writings "which constitute or

contain matters within the scope of Rule 26(b)” Rule 26(b) states: “Parties may obtain discovery in any matter, not privileged, that is relevant to the claim or defense of any party” Fed. R. Civ. P. 26(b)(1). Relevancy, for discovery purposes, does not mean that the documents requested must be admissible as evidence at trial. Rather, the relevancy standard is satisfied if the party can show that the information sought “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1); see also Coleman v. American Red Cross, 23 F.3d 1091, 1097 (6th Cir. 1994); Marshall v. Bramer, 828 F.2d 355, 357-58 (6th Cir. 1987).

In this case, the requested documents - which relate to the \$500,000 investment between Delta (Van Doorn’s company) and BLF - are relevant to BOA’s defense in this case. BOA contends that the BLF transaction was the only other “High Yield Investment Program” that plaintiff participated in during the time period that BOA held plaintiff’s \$10,000,000. The fact that plaintiff is no longer claiming any damages based on the \$500,000 investment does not preclude BOA from obtaining discovery on this transaction. If, as BOA contends, that (1) Van Doorn did not realize any profit from his \$500,000 investment; (2) both of the investment programs were fraudulent schemes; and (3) Van Doorn was introduced either directly or indirectly to the players who were offering these investment programs through the same individual, Ms. Marie Aaserud,

then the \$500,000 investment and the documents relating to that transaction are relevant to BOA's attack on plaintiff's request for damages. Thus, plaintiff's withdrawal of Mr. LeClerc as plaintiff's expert and its claim that the \$500,000 and \$10,000,000 transaction involved two different types of investment programs, even if true, does not negate the relevancy of the requested documents to other aspects of BOA's case.

III. CONCLUSION

For the above reasons, defendant BOA's motion to compel is GRANTED. Within ten days of the date of this order, the plaintiff shall comply with Requests for Production Nos. 3, 4, 5, 6, 7, and 8 of BOA's Fourth Set of Requests For Production of Documents.

IT IS SO ORDERED this 25th day of September, 2003.

TU M. PHAM
UNITED STATES MAGISTRATE JUDGE